IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.19178 of 2004
Date of Decision : May 21, 2007.

Baljinder Kaur .... Petitioner

Vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.
HON'BLE MR.JUSTICE L.N.MITTAL.

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Present : Mr.Kapil Kakkar, Advocate
for the petitioner.

Mr.Gurminder Singh, Addl.A.G., Punjab
for respondents no.1 to 3.

Mr.H.S.Minhas, Advocate
for respondents no.4 to 7.

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J.S.KHEHAR, J. (Oral) :

The petitioner responded to an invitation, for filling up posts of Anganwadi Worker, at Anganwadi centres in District Sangrur. It is not a matter of dispute that the petitioner was eligible for consideration. It is also not a matter of dispute that the petitioner was actually considered for appointment against the post of Anganwadi Worker.

After completing the process of selection, the petitioner was not chosen for appointment as Anganwadi Worker. Out of the same selection process, respondents no.5, 6 and 7, being more meritorious, were allowed appointment as Anganwadi Workers.

It is not a matter of dispute at the hands of the petitioner that in terms of the instructions regulating the process of selection and appointment to the post of Anganwadi Workers, the private respondents were more meritorious than the petitioner. Despite conceding the aforesaid, it is the vehement contention of the learned counsel for the petitioner that the petitioner ought to have been selected on account of her having more experience as Anganwari worker than respondents no.5 to 7.

On the issuance of notice of motion, a joint written statement was filed on behalf of official respondents. A separate written statement was also filed on behalf of respondent no.4. During the course of hearing, learned counsel representing respondents no.1 to 3 acknowledges that the petitioner had more experience as Anganwadi Worker, in comparison to the experience of respondents no.5 to 7. In fact, it is conceded that respondents no.5 to 7 had no experience either as Anganwari Worker or as Balsevika before the present process of selection.

It is the vehement contention of learned counsel for the respondents that the petitioner could not be chosen for appointment in preference over respondents no.5 to 7 on account of the fact that respondents no.5 to 7 were granted more marks in the process of selection than the petitioner.

In order to substantiate his contention, learned counsel for the petitioner placed reliance on Clause 5 of the instructions for recruitment of Anganwadi Workers and Helpers (Annexure R-5). Clause 5 of the aforesaid instructions is being reproduced here under :-

> ***"5. Experience :*** *At the time of recruitment if any experienced as Anganwadi Workers or Balsevika is available then she will be given preference above all the other candidate subject to the condition that the worker fulfills the other conditions of education and residence prescribed for the appointment of Anganwadi Workers.*

> *In case, there are more than one trained Anganwadi Worker/Balsevika are available then the preference will be given to the candidate having maximum experience. Likewise, the candidate possessing the experience for a period of minimum five years as Anganwadi helpers will be given preference and in case of availability of experienced Anganwadi Worker/Balsevika and Helper, Anganwadi Worker/Balsevika will be given preference."*

On the basis of Clause 5, it is submitted that if any experienced Anganwadi Worker or Balsevika is available, then she should be given preference over "all the other candidates". Additionally, relying on the same clause, it is submitted that in case, a candidate is more experienced as an Anganwadi Worker or Balsevika, in comparison to other candidates, the one with more experience has also to be preferred over all others. Learned counsel for the petitioner also relies on the expression contained in Clause 5 of the instructions extracted herein above, wherein for giving such preference, the only pre-condition prescribed is, that such candidate should fulfill the other conditions of education and residence, prescribed for appointment as Anganwadi Worker. Since it is not a matter of dispute that the petitioner possessed the other conditions of education and residence, learned counsel vehemently contends that on account of her longer experience as Anganwadi Worker, the petitioner should be granted preference in the matter of appointment as Anganwadi Worker. It also needs to be noticed here that the fact that respondents no.5 to 7 had no experience whatsoever as Anganwadi Worker or Balsevika, is also not disputed.

In order to repudiate the contention of learned counsel for the petitioner, learned counsel for the respondents has invited our attention to various clauses of the instructions, so as to submit that the process of selection, to the post of Anganwadi Worker, is regulated on the basis of merit, and as such, there is no question of ignoring the merit. In this behalf,

it is submitted that experience would be given preference only if merit of the rival candidates is the same. In this behalf, learned counsel for the respondents placed reliance on Clause 1 of the instructions for recruitment of Anganwari Workers and Helpers (Annexure P-5). Clause 1 relied upon by the learned counsel for the respondents is being extracted here under :-

> ***"1. Educational Qualification :*** *For appointment as Anganwadi Workers the minimum education qualification will be Matric pass or its equivalent examination. The candidate should have passed this examination from any recognised University or Education Board. However, preference will be given to the candidate possessing higher qualification. In case of merit being equal the preference will be given to the candidate older in age."*

We have considered the aforesaid solitary contention advanced by the learned counsel for the respondents and find no merit therein. In fact, the entire argument advanced, on behalf of the respondents, stands defeated on the basis of Clause 1, on which learned counsel for the respondents has placed reliance. Clause 1 expressly notices that higher qualification would be a matter of preference in case, where the merit of the candidates is equal. This clause is clearly missing from Clause 5, relied upon by the learned counsel for the petitioner. Had it been the intention of the authorities to grant preference for experience only when the candidates were at the same level of merit, it would have been so expressed, as is the case in Clause 1. Additionally, Clause 5 relied upon by the learned counsel for the petitioner indicates that preference for higher experience would be above "all other candidates subject to the condition that the worker fulfills the other conditions of education and residence". These words in Clause 5 leave no room for doubt that the preference envisaged under Clause 5, over rides all other considerations for determining merit. In the aforesaid view of the

matter, it is not possible for us to accept the contention advanced by the learned counsel for the respondents.

We are satisfied that a candidate with experience or with more experience as Anganwadi Worker or as Balsevika would have preference above all other candidates. Since the petitioner had experience as Anganwadi Worker whilst respondents no.5 to 7 did not have any such experience, the petitioner ought to have been preferred over respondents no.5 to 7 in the matter of selection and appointment as Anganwadi Worker.

In view of above, we direct the respondents to appoint the petitioner as Anganwadi Worker, with effect from the same date, as respondents no.5 to 7. In case, all the respondents no.5 to 7 cannot be accommodated against existing vacancies, the one amongst them, who is the lowest in merit, shall make way for the petitioner.

Allowed in the aforementioned terms.

(J.S.KHEHAR)
JUDGE

May 21, 2007
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(L.N.MITTAL)
JUDGE